

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SABA CAPITAL MASTER FUND, LTD.,

Plaintiff,

-against-

BLACKROCK ESG CAPITAL ALLOCATION  
TERM TRUST, et al.,

Defendants.

24-CV-01701 (MMG)

**ORDER**

MARGARET M. GARNETT, United States District Judge:

At the August 2, 2024 Initial Pretrial Conference, Plaintiff expressed an intent to proceed with summary judgment briefing without exchanging discovery. Defendants disagreed and argued that summary judgment was premature in the absence of any discovery. After considering the parties' arguments, the Court allowed Plaintiff to file its motion for summary judgment and provided Defendants the opportunity to submit a five-page letter, after they received Plaintiff's summary judgment motion, indicating what discovery they believed to be necessary or appropriate in light of Plaintiff's motion. Plaintiff was similarly afforded an opportunity to respond to Defendants' letter. *See* Dkt. No. 50. In accordance with this Order, Plaintiff filed its motion for summary judgment on August 30, 2024, Defendants filed their letter response on September 13, 2024, and Plaintiff filed its response to Defendants' letter on September 30, 2024. *See* Dkt. Nos. 55, 56, 58, 59, 61.

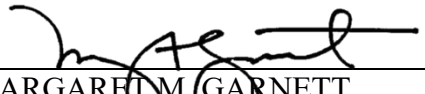
The Court held a status conference on October 9, 2024, to further discuss the parties' positions regarding whether summary judgment briefing should proceed or discovery should occur before the briefing continued. The Court heard argument from counsel for Plaintiff and Defendants and took this issue under advisement.

Having reviewed Plaintiff's motion for summary judgment and supporting filings and the letters submitted by both parties, and after hearing argument at the October 9 conference, the Court finds that Plaintiff has a colorable claim that the grounds on which its motion for summary judgment rests can be resolved without further discovery. Defendants' arguments to the contrary, at least as made thus far in their September 13 letter and at the October 9 conference, do not satisfy the standard of Rule 56(d) of the Federal Rules of Civil Procedure. Accordingly, it is hereby ORDERED that summary judgment briefing shall proceed prior to discovery in accordance with the briefing schedule described below. Nothing in this Order shall preclude Defendants from making arguments in their opposition to Plaintiff's summary judgment motion that denial of the motion is warranted because discovery is necessary to fully investigate the claims or defenses at issue in this case, or because certain material facts would be fairly in dispute had discovery proceeded in the normal course.

Defendants shall file their opposition to Plaintiff's motion for summary judgment no later than **November 12, 2024**, and Plaintiff shall file its reply in support of its motion for summary judgment no later than **November 26, 2024**.

Dated: October 11, 2024  
New York, New York

SO ORDERED.

  
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MARGARET M. GARNETT  
United States District Judge